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**FIRST AMENDMENT TO
OWNER PARTICIPATION AGREEMENT**

This First Amendment to Owner Participation Agreement ("Amendment"), is made as of this ____ day of _____, 2006 ("Effective Date") by and between the Milpitas Redevelopment Agency, a public body, corporate and politic ("Agency"), and Western Pacific Housing, Inc., a Delaware corporation ("Participant," and together with Agency, the "Parties").

WHEREAS, the Agency and Fairfield Great Mall, LLC., a California limited liability company ("Fairfield"), entered into that certain Owner Participation Agreement dated August 17, 2005 ("Agreement") to provide for the development of a residential project consisting of four hundred and eighty one (481) units consisting of twenty four (24) very low-income units, four (4) low-income units, and seventy two (72) moderate-income units known as the Fairfield, Mid-Town, or Centria Project ("Project"); and

WHEREAS, Pursuant to the Recitals, Section 202, and Attachment No. 6 of the Agreement, the Agency agreed to provide assistance for the ninety six (96) very low- and moderate-income units; and

WHEREAS, on or about November 23, 2005, Participant purchased the Project from Fairfield and, in connection therewith, Fairfield and Participant entered into that certain Assignment and Assumption of Owner Participation Agreement, pursuant to which, among other things, Fairfield assigned to Participant all of Fairfield's right, title, and interest in and to the Agreement, and Participant accepted such assignment and agreed to assume, all of Fairfield's obligations thereunder and, as a result, assumed the role of "Participant" thereunder; and

WHEREAS, Participant now proposes to reduce the number of units to four hundred and sixty four (464) units consisting of twenty two (22) very low-income units, four (4) low-income units, and sixty seven (67) moderate-income units; and

WHEREAS, Agency will now provide assistance for only eighty nine (89) very low- and moderate-income units rather than ninety six (96) units, which is a reduction of seven point three percent (7.3%); and

WHEREAS, the Parties have agreed to amend the Agreement and its Attachments to reduce the Agency Financial Assistance in proportion to the amount of units by which Participant seeks to reduce its production; and

WHEREAS, the previous Agency assistance totaled One Million Two Hundred and Forty Thousand Dollars (\$1,240,000), of which Eight Hundred and Forty Thousand Dollars (\$840,000) was for twenty-four (24) affordable housing units at Thirty Five Thousand Dollars (\$35,000) each, and the remaining Four Hundred Thousand Dollars (\$400,000) was for Agency payment of Developer's City fees for zoning entitlements, building permits, park in-lieu, traffic mitigation, and school impact; and

WHEREAS, the amended Agency assistance will total One Million One Hundred Forty Nine Thousand and Four Hundred Eighty Dollars (\$1,149,480), of which Seven Hundred and Seventy Thousand Dollars (\$770,000) is for twenty-two (22) affordable housing units at Thirty Five Thousand Dollars (\$35,000) each, and the remaining Three Hundred Seventy Nine Four Hundred Eighty Dollars (\$379,480) is divided among Agency payment of Developer's City fees for zoning entitlements, building permits, park in-lieu, traffic mitigation, and school impact.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

Section 1. Unless otherwise defined herein, capitalized terms used in this Amendment shall have the same definitions as set forth in the Agreement.

Section 2. Recital B of the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strike~~through; additions in *italics*]:

B. Participant is the fee owner of that certain real property located at the southwest corner of South Main Street and Great Mall Parkway in the City of Milpitas, California, that is more particularly described in the legal description set forth in Attachment No. 1 attached hereto and incorporated herein by this reference (the "Site"). Participant has proposed to develop a residential condominium project on the Site with approximately ~~481~~ *464* units, of which ~~100~~ *93* units (the "Restricted Units") shall be affordable for very low, low, and moderate-income persons and households, subject to the applicable ordinance and regulations of and development permits issued by the City of Milpitas ("City") and the terms and conditions set forth herein (said development, including both the market-rate units and the Restricted Units and all related improvements and fixtures being referred to herein as the "Project").

Section 3. Recital D of the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strike~~through; additions in *italics*]:

D. To effectuate the Redevelopment Plan for the Project Area and make it feasible for Participant to develop and continue to make available the Agency Assisted Units in the Project at an affordable housing cost, Agency desires to provide certain limited financial assistance to Participant and the Project from the Low- and Moderate-Income Housing Fund that Agency maintains in accordance with Sections 33334.2 and 33334.3 of the Redevelopment Law, all as more specifically described in this Agreement. As used herein, the term "Agency Assisted Units" shall mean the ~~96~~ *89* Restricted Units that will be restricted to occupancy by very low and moderate income households. The ~~4~~ *3* Restricted Units that will be restricted to occupancy by low income households are not being assisted with funds from Agency's Low- and Moderate-Income Housing Fund and do not constitute Agency Assisted Units.

Section 4. Action 8 of Attachment No. 4 to the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strike~~through; additions in *italics*]:

8. Agency pays up to ~~\$350,000~~ *\$332,045* in various City permit fees for Agency Assisted Units (Att. No. 6, pars. 1 and 2).

Section 5. Action 9 of Attachment No. 4 to the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strike~~through; additions in *italics*]:

9. Agency reimburses Participant up to ~~\$50,000~~ *\$47,435* of school fees paid by Participant for Agency Assisted Units (Att. No. 6, ¶ 3).

Section 6. Action 13 of Attachment No. 4 to the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strike~~through; additions in *italics*]:

13. Agency deposits ~~\$840,000~~ *\$770,000* into the down payment assistance program fund (Att. No. 6, ¶ 4).

Section 7. Recital E of Attachment No. 5 to the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strike~~through; additions in *italics*]:

E. The OPA provides for the construction on the Property of a ~~481~~ *464* single-family residential condominium development project, consisting of a minimum of ~~100~~ *93* units (the "Project") affordable to Very Low, Low, and Moderate Income persons and households as set forth in this Agreement. ~~96~~ *89* units will be assisted by Agency Financial Assistance. 4 units will not be assisted by Agency Financial Assistance, but will still be subject to this Regulatory Agreement.

Section 8. Section 2.1 of Attachment No. 5 to the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strike~~through; additions in *italics*]:

2.1 Development of Restricted Ownership Units. Participant shall develop ~~100~~ *93* dwelling units (the "Restricted Ownership Units") on the Property as follows:

- 2.1.1 ~~24~~ *22* units affordable to very low income households consisting of ~~18~~ *17* 1-bedroom units and ~~6~~ *5* 2-bedroom units.
- 2.1.2 4 units affordable to low income households consisting of ~~4~~ *3*-bedroom units.
- 2.1.3 ~~72~~ *67* units affordable to moderate income households consisting of ~~22~~ *1-bedrooms* and ~~45~~ *2*-bedroom units.
- 2.1.4 The Restricted Ownership Unit's location is as shown on the dispersal plan approved by the Agency's Executive Director and attached to this Agreement as Exhibit G.

Section 9. Attachment No. 6 to the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strike~~through; additions in *italics*]:

AGENCY FINANCIAL ASSISTANCE

1. Agency shall pay the City an amount not to exceed ~~\$100,000.00~~ *\$94,870.00* to offset City of Milpitas-imposed zoning entitlement and building permit issuance costs for the Agency Assisted Units.

2. Agency shall pay the City an amount not to exceed ~~\$250,000.00~~ *\$237,175.00* to offset City of Milpitas-imposed park in-lieu fees and traffic mitigation fees for the Agency Assisted Units.

3. Agency shall reimburse the Participant an amount not to exceed ~~\$50,000.00~~ *\$47,435.00* to offset applicable school impact fees for the Agency Assisted Units.

4. Agency shall fund and administer a down payment assistance program for qualified very low income purchasers in the amount of ~~\$840,000~~ *\$770,000*. The maximum assistance provided to an individual very low income purchaser will not exceed \$35,000.

5. If the amounts set forth in Sections 1, 2, or 3 exceed 20% of the respective total fee amounts, the financial assistance in excess of 20% will be transferred to Participant to offset a portion of the cost to be incurred by the Participant in constructing the Agency Assisted Units.

Section 10. Except as modified hereby, all of the terms and conditions of the Agreement shall continue in full force and effect and are incorporated herein by this reference. If there is a conflict between the provisions of the Agreement and the provisions of this Amendment, the provisions of this Amendment shall control.

WHEREFORE, the Parties have executed this Amendment in triplicate on or as of the date first above written.

Signatures on the Next Page

MILPITAS REDEVELOPMENT AGENCY, a
public body corporate and politic

By: Charles Lawson
Its: Executive Director

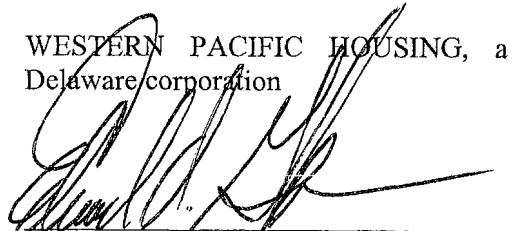
ATTEST:

By: Mary Lavelle
Its: Agency Secretary

APPROVED AS TO FORM:

By: Steven T. Mattas
Its: Agency Counsel

WESTERN PACIFIC HOUSING, a
Delaware corporation


By: EDWARD A. GALLAGHER
Name: *Edward A. Gallagher*
Title: *VP President*